



WILLIAM T FUJIOKA
Chief Executive Officer

County of Los Angeles
CHIEF EXECUTIVE OFFICE

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October 29, 2013

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

20 October 29, 2013

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

**PARTICIPATION IN CLEAN-UP EFFORTS AT OMEGA CHEMICAL SUPERFUND SITE
(ALL DISTRICTS)
(3 VOTES)**

SUBJECT

The recommended actions will comply with notices received from the United States Environmental Protection Agency and the United States Justice Department to provide continued investigation and remediation of the Omega Chemical Superfund Site located in the City of Whittier and approve a related litigation settlement.

IT IS RECOMMENDED THAT THE BOARD:

1. Delegate authority to the Chief Executive Officer to execute or approve, with the concurrence of County Counsel, the consent decrees, orders, good faith offer, and administrative documents related to the continued investigation and remediation of the Omega Chemical Superfund Site.
2. Authorize a not-to-exceed amount of \$3.5 million towards the continued investigation and remediation of the Omega Chemical Superfund Site.
3. Approve the litigation settlement and authorize County Counsel to pay \$90,000 for the attorney's fees and litigation settlement costs from the Judgments and Damages Budget.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The recommended actions will comply with the consent decrees, orders, good faith offer, and administrative documents from the United States Environmental Protection Agency (USEPA) and the United States Justice Department (Justice Department); and authorize the Chief Executive Officer

(CEO) to execute, with the concurrence of County Counsel, such noticed documents related to the continued investigation and remediation of the Omega Chemical Superfund Site (Omega Site) located in the City of Whittier.

Background

The Omega Site is located at 12504 and 12512 Whittier Boulevard, in the City of Whittier. It was owned and operated, from 1976 to 1991, by the former Omega Chemical Corporation as a solvent and refrigerant recycling, reformulation, and treatment facility. In 1991, the USEPA declared the Omega Site, a Superfund site, due to its large soil contamination.

As identified by the USEPA, the County, along with over 250 other private corporations and public agencies/jurisdictions, sent hazardous materials to the Omega Site. Of the aggregate overall deposited hazardous material at the Omega Site, the County's share currently totals 1.74 percent under the Potential Responsible Party Group (PRP Group) allocation. Ten County departments were identified as contributors to the County's 1.74 percent of the aggregate overall deposited hazardous material in the following percentages:

Harbor/UCLA Medical Center 27.95%
LAC+USC Medical Center 21.59%
Internal Services Department 16.81%
Fire Department 14.27%
Olive View Medical Center 11.57%
Martin Luther King/Drew Medical Center 3.01%
Department of Public Works 2.17%
Museum of Art 1.29%
Sheriff 0.71%
Public Library 0.63%

When the initial investigation and remediation was authorized in 2000, it was anticipated that the USEPA could identify additional remedial activities. At that time, the investigation and remediation covered approximately one city block.

Currently, the USEPA has identified the area to now extend 4.5 miles south from the original site. The USEPA's considerable expansion of the scope and work has added to the cost and complexity of the matter, which will be further defined over the coming years.

Depending on each site's circumstances, the USEPA can divide a site into separate reference areas based on property boundaries, specific hazardous materials, and/or environmental media (air, soil, and groundwater). As a result, the USEPA divided the Omega Site into three separate Operable Units:

Operable Unit No. 1 (OU1) is defined as the soil and groundwater contamination below the Omega Site and neighboring properties extending 100 feet south (downgradient) of Putnam Street, Whittier, California;

Operable Unit No. 2 (OU2) is defined as the groundwater contamination extending approximately 4.5 miles south (downgradient) of the Omega Site; and

Operable Unit No. 3 (OU3) is defined as the indoor air at or near the Omega Site.

Operable Unit No. 1

In July 2000, the Board adopted a recommendation authorizing the execution of a consent decree, issued by the USEPA, for participation in the investigation and partial remediation of OU1 (Consent Decree), authorizing the County to become a part of the PRP Group leading the investigation and remediation efforts, and authorizing the funding of initial expenditures. It was noted in the 2000 Board letter that at a future date, additional remedial activity could be identified and required by USEPA.

In August 2007, the Board authorized the execution of two Amendments to the Consent Decree, in part expanding the scope of the OU1 remedial activities.

In 2010, the USEPA and the PRP Group then entered into a second consent decree for the soil remediation (Soils Consent Decree) at OU1 based on the results from the investigation performed under the Consent Decree.

Currently, OU1 continues with the investigation and remediation below the Omega Site and neighboring properties 100 feet downgradient of Putman Street. The majority of costs incurred to date have been funded by settling third parties.

It is recommended that the Board authorize and delegate to the CEO, with the concurrence of County Counsel, the execution of the Soils Consent Decree, and fund the estimated County percentage of investigation and remediation costs related to OU1 under the Consent Decree and the Soils Consent Decree. The CEO will return to the Board if USEPA identifies additional work not encompassed by the Consent Decree and Soil Consent Decree.

Operable Unit No. 2

The USEPA and PRP Group are currently negotiating the extent and scope of the PRP Group's liability for OU2. The OU2 contamination consists of contaminants from several sites making this process difficult. The PRP Group offered the USEPA a good faith offer and is negotiating the terms.

It is recommended that the Board authorize and delegate to the CEO, with the concurrence of County Counsel, the execution of a settlement related to OU2 based on the PRP Group's good faith offer, and execution or approval of administrative documents related to investigating the extent and scope of the PRP Group's liability. The CEO will return to the Board if substantial changes are made to the terms of the good faith offer.

Operable Unit No. 3

In 2009, some buildings located at or near the Omega Site detected vapor intrusion that precipitated USEPA and the PRP Group entering into an Administrative Order on Consent (AOC) to identify and install mitigation measures to prevent further vapor intrusion.

It is recommended that the Board authorize and delegate to the CEO, with the concurrence of County Counsel, the execution of the AOC and fund the estimated County percentage of vapor intrusion mitigation costs related to OU3. The CEO will return to the Board if additional work is identified by the USEPA not encompassed by the AOC.

Aguirre Litigation and Settlement

In 2010, plaintiffs filed suit against the PRP Group in Aguirre, et al. v. Omega Chemical Corp, et al. Case No. BC450023, alleging they suffered personal injuries from the Omega Site's contamination, which had migrated downgradient of the Omega Site.

Under the currently Board authorized and executed PRP Group Agreement, individual PRP Group members share the litigation costs of the PRP Group.

It is recommended that the Board approve the litigation settlement and authorize the County Counsel to fund the County's percentage share of the settlement and litigation costs.

Implementation of Strategic Plan Goals

The recommended actions meet the Board approved County Strategic Plan Goal of Operational Effectiveness (Goal 1), by completing the proposed investigation and remediation services in the most efficient and cost-effective manner. It also directs us to provide Integrated Services Delivery (Goal 3), by maximizing opportunities to measurably improve client and community outcomes and leverage resources through the continuous integration of health, community, and public safety services.

FISCAL IMPACT/FINANCING

The estimated costs for investigation, remediation, and litigation related services for the County's current allocation totals \$3,590,000. Upon the Board's approval of Fiscal Year 2013-14 Supplemental Resolution, sufficient appropriation is available in the Omega Chemical Superfund Site Capital Project No. 87128, to fund the \$3.5 million investigation and remediation costs. Sufficient appropriation is available in the Judgments and Damages Budget to fund the \$90,000 litigation settlement costs.

Costs for each Omega Site components are as follows:

Operable Unit No. 1

The OU1 portion of the Omega Site has incurred investigation and remediation costs totaling \$26.0 million. The majority of these costs have been paid to date from the settling of some of the 250 third parties named by the USEPA and the Justice Department as contributing entities.

To date, the County has only paid \$68,349 of the estimated total investigation and remediation costs of \$26.0 million. The Consent Decrees are now projected to cost a total of \$50.0 million through the investigation and remediation anticipated for completion in 2035.

The County's 1.74 percentage share of the PRP Group costs, plus a 10 percent contingency, is estimated to total \$810,000 to complete the remaining work under the consent decrees. The County's percentage has slightly increased over the years (less than a percent) as several PRP Group members became financially defunct or left the PRP Group.

Operable Unit No. 2

The OU2 portion of the Omega Site has estimated investigation and groundwater remediation costs totaling approximately \$135.0 million. The County's 1.74 percentage share of the PRP Group costs, plus a 10 percent contingency, is estimated to be \$2.580 million.

Operable Unit No. 3

The OU3 portion of the Omega Site has an estimated vapor mitigation cost of approximately \$6.3 million. The County's 1.74 percentage share of the PRP Group costs, plus a 10 percent contingency, is estimated to be \$110,000.

Aguirre Litigation and Settlement

The total lawsuit estimate for attorney's fees, costs, and the settlement is approximately \$6.0 million. The County's percentage share of litigation related costs totals \$90,000 and funded from the Judgments and Damages budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Though the investigation and remediation activities have been and are being negotiated with the USEPA, noncompliance with the USEPA's orders and/or the Justice Department's Consent Decrees may result in stiff statutory fines and initiation of complex and expensive litigation.

In addition, with the expansion of the investigation and remediation, the Omega Site has become more prone to lawsuits with persons alleging damages based on the contaminants found at the Omega Site. Therefore, the PRP Group could be subject to future litigation.

County Counsel has reviewed the Administrative Order, Soils Consent Decree, and litigation settlement and concurs with the recommendations.

ENVIRONMENTAL DOCUMENTATION

The USEPA's review process under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) includes an analysis of environmental impacts and alternatives, incorporating all "applicable or relevant and appropriate requirements" (ARARs). While the review process is similar to that required by the California Environmental Quality Act (CEQA), CEQA is not considered an ARAR and, therefore, is not specifically incorporated into USEPA's selection of a remedy. Because the County's investigation and remediation requirements are set forth by the USEPA, compliance with CEQA is not required as it is precluded and/or preempted by CERCLA.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The requested actions described above are not anticipated to impact current services.

CONCLUSION

Upon approval of the recommendation, please return an adopted copy of this letter to the Chief Executive Office, Facilities and Asset Management Division.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'WTF', followed by a horizontal line.

WILLIAM T FUJIOKA
Chief Executive Officer

WTF:SHK:DJT
DKM:AT:rp

c: Executive Office, Board of Supervisors
County Counsel